tion numbered 1, it is my opinion that the new language inserted in Section 6, to-wit: “also out of funds not raised by such civil cities or towns by taxation” is sufficiently broad and all-inclusive to authorize cities and towns to appropriate from the funds of a municipally owned utility, or any funds other than from a tax levy, an amount not in excess of the amount raised by tax levy as provided for the purpose of carrying out the provisions of Chapter 172 of the Acts of 1925, being Burns’ R. S. 1933, Secs. 48-6901 to 48-6907 inclusive.

Answering your second question, it is my opinion that the following language, to-wit: “Such funds and the proceeds of any bonds issued pursuant hereto shall under no circumstances be used for any purpose other than the purpose designated in this act,” prevents any unexpended funds remaining in the recreation fund at the end of the year from reverting to the general fund or any other fund of the city, or being expended for any purposes except as provided in the Act.

BOARD OF ACCOUNTS: Construction of Chapter 239 of Acts of 1943 relating to fees for feeding prisoners.

March 31, 1943.

Hon. Otto K. Jensen, State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

Your letter of March 29, 1943, requests an opinion on the following questions, to-wit:

“1. Is the exact amount per meal to be paid to the several sheriffs for feeding prisoners, for the period from the effective date of Chapter 239 of the Acts of 1943, to July 1, 1943, fixed by the order of the state examiner made on or before the fifteenth day of June, 1942, for the year beginning July 1, 1942?

“2. If your answer to the first question is in the negative, by what authority and by what officer or officers is such determination made?”
Chapter 239 of the Acts of 1943 (House Bill No. 168) carries an emergency, and therefore came into effect March 10, 1943, the date of its approval. Section 1 of said Act provides as follows:

"Section 1. Be it enacted by the General Assembly of the State of Indiana, That section 1 of the above entitled act be amended to read as follows: Section 1. That the sheriff of each and every county of this state having a population of less than three hundred thousand according to the last preceding United States census shall be allowed the sum of not to exceed thirty (30c) cents per meal served by such sheriff in feeding the prisoners in his charge. That the expense of feeding prisoners in the custody of the sheriff in each and every county of this state having a population of three hundred thousand or more according to the last preceding United States census shall be paid as now or hereafter otherwise provided by law. That the exact amount per meal which the sheriff of each county shall be entitled to receive for feeding prisoners, at not to exceed the maximum amount hereinbefore prescribed in this act, shall be fixed by the state examiner of the state board of accounts on or before the fifteenth day of June of each year, and the amount so fixed shall apply to the year beginning on the first day of July next succeeding. Such allowance shall be paid out of the general fund of the county. That before any such allowance is paid, the sheriff shall submit to the board of county commissioners an itemized statement, under oath, showing the names of the prisoners and the date that each was imprisoned in the county jail, and the number of meals served to each such prisoner."

It is well settled that:

"An amendment of a section of a law 'to read as follows' operates to repeal all of the section amended not embraced in the amended section of the law. Lewis' Sutherland, Statutory Construction (2d ed.) Section 337."

Smith v. State (1924), 194 Ind. 686, 688.
Therefore, all of Section 1, Chapter 73 of the Acts of 1935, Section 49-1323 Burns' 1933 Supplement, is amended, and so Section 1 of Chapter 239 of the Acts of 1943 supersedes it as of March 10, 1943.

The effect of this amendment is to take out, as to all matters occurring thereafter, the part amended as completely as though it had never existed, and the amendatory section is construed as being a part of the original act.

"It is a rule of statutory construction that the amendment of a statute by a subsequent act operates from that time precisely as if the subject-matter of the amendment had been incorporated in the prior act at the time of its adoption; for the amendment becomes a part of the original act, from the date such amendment is in force, whether it be the change of a word, figure, line or entire section, or a recasting of the whole language."

Stiers v. Mundy (1910), 174 Ind. 651, 655.

Accord:

Blackmore v. Dolan (1875), 50 Ind. 194.

"Any words or language replaced by other words or language in the amendment abrogate the language of the original section which is supplanted by different words or language in the amendment, so that all those provisions or words of the original section which are not repeated in the amended statute are abrogated and are therefore of no force or effect whatever."

State, ex rel. v. Bowman, Auditor (1927), 199 Ind. 436, 445.

From an examination of Chapter 239 of the Acts of 1943, supra, it will be noted that there is no provision in the Act for counties of less than three hundred thousand (300,000) population fixing the amount the sheriff shall receive for feeding prisoners between the time the Act became in effect (March 10, 1943) to the first day of July, 1943, with the exception that the amount shall not be in excess of thirty cents (30c) per meal served by the sheriff.
Your letter had attached your schedule for the feeding of prisoners, as adopted the 12th day of June, 1942, pursuant to Chapter 73 of the Acts of 1935, Section 49-1323 Burns' 1933 Supplement. However, in view of the well defined principle of statutory construction above stated, I am of the opinion that this schedule has not been in force since March 10, 1943, and there is no statutory authority now for you to make a schedule which would be in effect between March 10, 1943, and July 1, 1943. Therefore, your first question is answered in the negative.

The amendatory Act of 1943, supra, provides that the allowance to the sheriff for the feeding of prisoners shall be paid out of the general fund of the county. Therefore, it is properly an account chargeable against the county. Section 1, Chapter 7, of the Acts of 1935, Section 26-620 Burns' 1933 Supplement, provides as follows:

"Such commissioners (county commissioners), in their respective counties, shall have power, at their meetings:

"* * *

"Second. To allow all accounts chargeable against such county not otherwise provided for; and to direct the raising of such sums as may be necessary to defray all county expenses."

In the case of The Board of Commissioners of Marion County v. Reissner (1877), 58 Ind. 260, the issue on appeal was whether or not Marion County should be required to pay for coal used by the sheriff for heating the jail. Section 1, R. S. 1876, page 601, provided that: "There shall be established and kept in every county, by authority of the board of commissioners, and at the expense of the county, a prison for the safe-keeping of prisoners lawfully committed." The court, on page 262 of said opinion, in holding the county liable to pay for the coal used in providing heat for the prisoners in jail, said:

"We are not aware of any express provision of the statute as to the manner of paying the sheriff for fuel thus furnished by him; but as he is to furnish it at the expense of the county, it follows that the county is responsible to him for it. The commissioners might
have allowed it under section 13, 1 R. S. 1876, p. 352, which authorizes them to allow all accounts chargeable against the county.”

Under Section 26-620 Burns’ 1933 Supplement, the county commissioners have power to make allowances to the county sheriff for the feeding of prisoners in an amount not to exceed thirty cents (30c) per meal for counties with a population of less than three hundred thousand (300,000), and therefore it is my opinion, in answer to your second question, that between March 10, 1943, and July 1, 1943, the amount to be paid the sheriff for the feeding of prisoners in counties of less than three hundred thousand (300,000) population should be fixed, determined and allowed by the county commissioners in each county in a sum not to exceed thirty cents (30c) per meal.


April 2, 1943.

Mr. H. M. Wright, Chief,
Bureau of Vital Statistics,
Indiana State Board of Health,
1098 West Michigan Street,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of March 25, 1943, in which you request an official opinion as to the constitutionality and applicability of Senate Bill No. 12, passed at the recent session of the Legislature and which will be known as Chapter 306 of the Acts of 1943.

This Act is an Act entitled:

“AN ACT to amend section 1 of an act entitled ‘An act to amend section one (1), two (2), and three (3) of an act entitled “An act to collect accurate records of deaths, births, contagious diseases and marriages, prescribing the duties of the state board of health and of all health officers, in relation thereto, providing penalties for the violation of the provisions